

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Implementation of Section 621(a)(1) of the Cable |) | MB Docket No. 05-311 |
| Communications Policy Act of 1984 as amended |) | |
| By the Cable Television Consumer Protection and |) | |
| Competition Act of 1992 |) | |

REPLY COMMENTS OF AT&T INC.

AT&T Inc. (AT&T) respectfully submits these replies to comments filed by municipalities, (1) arguing that the Commission has no authority to impose any limits on, or otherwise preempt, local customer service laws or other requirements,¹ and (2) urging the Commission to rule that video services provided over Internet Protocol (like AT&T's IPTV service) are cable services, subject to the same federal, state, and local laws as the video services provided by incumbent cable providers.² As discussed in AT&T's initial comments and herein, the Commission plainly has authority to adopt rules to prevent LFAs from adopting unreasonable data collection and service quality standards that effectively prevent competitive entry to the video services market, contrary to the federal policies encouraging video competition and broadband deployment, and should do so here. In addition, the Commission should reject the LFAs' claim that AT&T's two-way, interactive IPTV service is a cable service subject to the same laws and requirements as incumbent cable operators. As the Commission recognized in its *Franchising Reform*

¹ See, e.g., Burnsville/Egan Telecommunications Commission, et al. Comments at 23-25 (LFAs' Comments); Anne Arundel County, MD., et al. Comments at 3-4 (Local Community Coalition Comments); and NATOA, et al., Comments at 17.

² LFAs' Comments at 8-10.

Order, that issue is more appropriately addressed in the Commission’s open *IP-Enabled Services Proceeding*.³ In any event, however, as AT&T has demonstrated in its filings in that docket, which AT&T incorporates herein by reference, AT&T’s two-way interactive, IP-based video services is not a cable service, as that term is defined in the Cable Act, and thus is not subject to legacy cable regulation under federal, state and local laws.⁴

DISCUSSION

1. The Commission Should Make Clear That Local Customer Service Regulation May Not Unreasonably Burden Video Competition.

As AT&T acknowledged in its opening comments, section 632(d)(2) of the Cable Act authorizes state and local governments to adopt customer service requirements that differ from those adopted by the Commission.⁵ That authority, however, is not unlimited, as the Municipalities claim. Those parties contend that the Commission has no authority to preempt or otherwise limit local customer service laws or requirements. That is so, the theory goes, because section 632(d)(2) provides that the Act does not “preclude a franchising authority and cable operator from agreeing to customer service requirements that exceed” those established by the Commission,” or “prevent the establishment and enforcement” of any duly enacted “municipal law or regulation, or any State law.”⁶

³ *Franchising Reform Order*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, para. 124 (2007), citing *IP-Enabled Services*, 19 FCC Rcd 4863 (2004).

⁴ Letter from James C. Smith, Senior Vice President, SBC Services Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-36 (filed Sept. 14, 2005) (*September 14 Letter*); Letter from James C. Smith, Senior Vice President, SBC Services Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-36 (filed Jan. 12, 2006) (*January 16 Letter*).

⁵ AT&T Comments at 6.

⁶ See LFA Comments at 24-25 (asserting that section 632(d)(2) “unequivocally” prevents the Commission from preempting any state or local customer service laws or requirements); Local Community Coalition Comments at 3-4 (claiming that the language of section 632(d)(2) so clearly precludes the Commission from “overrid[ing] a community’s rights to establish customer service rules” that “it is unclear why the

Section 632(d)(2) cannot bear the weight the Municipalities seek to put upon it. Under their reading of that provision, LFAs could impose any local customer service standards and requirements no matter how onerous or arbitrary, and irrespective of the impact on video competition and broadband deployment. Thus, a municipality could, for example, in the name of protecting consumers or promoting service quality, require a video service provider to restore service within minutes of being notified of a service outage regardless of the cause of such outage – a standard that no provider could meet, particularly where the outage is a result of damage to outside plant. Likewise, an LFA could impose different customer service standards and requirements on different providers, regardless of the disparate impact and adverse effect on competition. Obviously, such a reading of section 632(d)(2) could effectively read the market opening provisions of section 621(a) out of the Act, and eviscerate Congressional and Commission initiatives to promote video competition and broadband deployment. And, just as plainly, such a reading is simply untenable.

As AT&T explained in its opening comments, section 632(d)(2) must be read in a manner that is consistent with section 621's prohibition against any unreasonable refusal by an LFA to grant additional cable franchises.⁷ As Verizon correctly points out, the Cable Act does not grant state and local governments carte blanche to regulate video and broadband providers through the guise of customer service regulation; rather, it constrains such authorities by prohibiting any requirements that would effectively result

Commission . . . raise[d] the issue at all"); City of Hopkinsville, KY Comments at 3 (section 632(d)(2) "bars the FCC from 'preempt[ing] state or local customer service laws'").

⁷ AT&T Comments at 7.

in an unreasonable refusal to grant a competitive franchise.⁸ Moreover, section 632(d)(2) permits local authorities to establish customer service requirements that apply only to a “cable operator,” and only to the extent that the operator is providing “cable service” over a “cable system.”⁹ That provision thus cannot be read to authorize sweeping regulation of any video or broadband service provider, and their facilities and services,¹⁰ or any requirement that would have the effect of frustrating Congressional and Commission video and broadband objectives. Accordingly, the Commission should make clear that LFAs may not impose customer service requirements that would effectively act as a barrier to entry, exceed the proper scope of local authority, or threaten federal video and broadband policies.

2. The Commission Should Reject Claims that IPTV is a Cable Service.

The Commission also should reject the LFAs’ claim that AT&T’s two-way interactive IPTV service, is a cable service, subject to the same federal, state, and local laws as video services provided by incumbent cable providers.¹¹ AT&T agrees with the Commission that this issue is more appropriately addressed in the *IP-Enabled Services Proceeding* (although AT&T supports prompt action on this issue therein).¹² But irrespective of whether the Commission resolves the issue here or in the *IP-Enabled Services Proceeding*), it should rule that AT&T’s two-way, IP-based video service is not

⁸ Verizon Comments at 2-4. As Verizon observes, in the case of a new entrant using emerging technologies, it would be unreasonable for an LFA not to take into account any unique attributes of those technologies. *Id.* at 5.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ LFAs’ Comments at 8-10.

¹² *Franchising Reform Order*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, para. 124 (2007), citing *IP-Enabled Services*, 19 FCC Rcd 4863 (2004).

a cable service, as that term is defined in the Cable Act, and thus is not subject to legacy cable regulation under federal, state or local laws.¹³

As AT&T previously has explained in filings in the *IP-Enabled Proceeding*, which AT&T incorporates herein by reference, although parts of AT&T'S IP-based video services may "look" like standard cable services, its service operates in a fundamentally different manner than a cable system.¹⁴ As we have described in more detail in our previous filings, unlike traditional cable services, AT&T's video service does not broadcast the entire spectrum of available programming to all subscribers connected to the system, relying on tuners in set-top equipment to select the channel displayed on a customer's television. Rather, AT&T's IP-based video service uses a switched, two-way, client server architecture that transmits to each subscriber only the programming the subscriber chooses to view at a particular moment. Its service also offers a host of interactive features that permit subscribers to tailor and integrate voice, video and data content in ways that are impossible in traditional, one-way cable networks. Because of the basic two-way nature of AT&T's service as well as its inherent capability to be integrated with other services, it falls outside the statutory definition of a "cable service." Accordingly, the Commission should reject the LFA's facile claim that, insofar as IP-based video services superficially resemble cable video services, they should be classified as such and subject to the same federal, state, and local laws as video services provided by incumbent cable providers.

¹³ Letter from James C. Smith, Senior Vice President, SBC Services Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-36 (filed Sept. 14, 2005); Letter from James C. Smith, Senior Vice President, SBC Services Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-36 (filed Jan. 12, 2006).

¹⁴ *September 14 Letter* at 17.

CONCLUSION

For the reasons set forth herein, and in AT&T's filings in the *IP-Enabled Services Proceeding*, the Commission should adopt rules to prevent LFAs from adopting unreasonable data collection requirements or service quality standards, and reject LFA's attempts to have the Commission rule that AT&T's IPTV video service is a "cable service" as that term is defined in the Act.

Respectfully submitted,

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